

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF ADOPTION,
NEW RULE I Access to Instructional)	AMENDMENT, AND REPEAL
Materials, NEW RULE II Procedural)	
Safeguards, NEW RULE III Special Education)	
Data Collection and Reporting, NEW RULE IV)	
Resolution Process, NEW RULE V Expedited)	
Due Process Hearing Resolution Process,)	
NEW RULE VI Response to Scientific,)	
Research Based Intervention in Learning)	
Disability Identification, NEW RULE VII)	
Severe Discrepancy in Learning Disability)	
Identification, NEW RULE VIII Documentation)	
Requirements in Learning Disability)	
Identification, and NEW RULE IX Extended)	
School Year Services, the amendment of)	
ARM 10.16.3007, 10.16.3008, 10.16.3018,)	
10.16.3019, 10.16.3121, 10.16.3122,)	
10.16.3125, 10.16.3132, 10.16.3135,)	
10.16.3136, 10.16.3141, 10.16.3142,)	
10.16.3150, 10.16.3180, 10.16.3181,)	
10.16.3194, 10.16.3220, 10.16.3320,)	
10.16.3321, 10.16.3340, 10.16.3341,)	
10.16.3502, 10.16.3504, 10.16.3505,)	
10.16.3506, 10.16.3508, 10.16.3510,)	
10.16.3515, 10.16.3523, 10.16.3528,)	
10.16.3531, 10.16.3560, 10.16.3571,)	
10.16.3660, 10.16.3661, 10.16.3662,)	
10.16.3803, and 10.16.3810, and repeal of)	
ARM 10.16.3129, 10.16.3145, 10.16.3146,)	
10.16.3196, 10.16.3322, 10.16.3342,)	
10.16.3516, 10.16.3751, and 10.16.3752)	
relating to special education)	

TO: All Concerned Persons

1. On February 22, 2007, the Superintendent of Public Instruction published MAR Notice No. 10-16-116 regarding the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 220 of the 2007 Montana Administrative Register, Issue Number 4.

2. After consideration of the comments received, the Superintendent of Public Instruction has adopted the following new rules exactly as proposed:

RULE I 10.16.3172 ACCESS TO INSTRUCTIONAL MATERIALS

10-5/24/07

Montana Administrative Register

RULE II	10.16.3501	PROCEDURAL SAFEGUARDS
RULE III	10.16.3143	SPECIAL EDUCATION DATA COLLECTION AND REPORTING
RULE IV	10.16.3508A	RESOLUTION PROCESS
RULE V	10.16.3528A	EXPEDITED DUE PROCESS HEARING RESOLUTION PROCESS
RULE VII	10.16.3019B	SEVERE DISCREPANCY IN LEARNING DISABILITY IDENTIFICATION
RULE VIII	10.16.3019C	DOCUMENTATION REQUIREMENTS IN LEARNING DISABILITY IDENTIFICATION

COMMENT: Northwest Council of Administrators of Special Education (NWCASE) submitted written comments and stated that between New Rules VI, VII, and VIII the following terms are used: insufficient response to intervention, sufficient response to intervention, two intensive individualized interventions, implemented for a sustained period of time, implemented over a reasonable period of time, and level of intervention necessary to sustain the response. The commenter stated that it appears that in some instances, the OPI requires "intensive individualized interventions for a sustained period of time" and in other instances "insufficient or sufficient response to scientific research based interventions over a reasonable period of time."

RESPONSE: The State Superintendent believes that the term "reasonable" in New Rule VI(1) should be changed to "sustained" for consistency and has amended Rule VI accordingly. The remaining terminology used is appropriate within the context in which it is used. New Rules VI and VII are intended to provide general guidance on the basic requirements leading to identification. New Rule VIII identifies the specific requirements for documenting the presence of a learning disability (LD). When a local education agency (LEA) chooses to use a response to scientific, research based intervention model, documentation of two intensive interventions is required. The definition of what constitutes a "sustained period of time" is left up to the LEA to determine. No changes have been made to New Rules VII and VIII.

3. After consideration of the comments received, the Superintendent of Public Instruction has adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

NEW RULE VI (10.16.3019A) RESPONSE TO SCIENTIFIC, RESEARCH BASED INTERVENTION IN LEARNING DISABILITY IDENTIFICATION (1) A student may be determined to have a specific learning disability based on an insufficient response to scientific, research based interventions resulting in a low level of academic achievement. Insufficient response to interventions occurs when, despite the implementation of the interventions over a ~~reasonable~~ sustained period of time, ~~the student's academic achievement continues to progress at a rate that is significantly below the learning rate of students of a similar age level~~ the student is not achieving adequately based on the student's age or grade level based on state approved K-12 content standards.

(a) through (a)(iii) remain as proposed.

(b) In determining the response to scientific, research based interventions, the evaluation team must consider data regarding how appropriately the intervention was delivered by qualified personnel, as well as, data comparing the student's rate of learning and current levels of performance with the student's initial levels of performance.

(2) A student may be determined to have a specific learning disability if the student is making sufficient response to scientific, research based interventions ~~provided:~~

~~(a) the student has been provided scientific, research based interventions in (1); and~~

~~(b) the level of intervention necessary to sustain the response can only be provided through special education services.~~

COMMENT: The Montana Council of Administrators of Special Education (MCASE) submitted written comments recommending that the term "significantly below" in (1) be changed to "two standard deviations below the population mean" to be consistent with the language in ARM 10.16.3019B.

RESPONSE: Use of a two standard deviation standard would not be an appropriate measurement to use in the context of a scientific, research based intervention process.

COMMENT: NWCASE commented that:

(a) the rule offers no guidance in determining the eligibility based upon the relationship between the student's rate of learning, the student's current rate of learning, and the student's initial levels of performance;

(b) the term "evaluation" should be added before the word "team" in (1)(b);

(c) subsection (2) suggests that if a student is unsuccessful in an intervention program, the student is then qualified under IDEA based upon the student's success in the regular education intervention program;

(d) the rule allows the inclusion of lower ability students who are working at their ability level to be identified as LD resulting in more lower ability students placed in special education when regular education does not develop alternate programs or teachers do not employ differentiated instruction in the regular classroom and thus, there will be a significant increase in the numbers of students receiving special education services under the LD category and given there is no state mandated curriculum, transfer students may not be able to access the same level of intervention from one school to another;

(e) there needs to be some clarification of "initial level of performance" to specify if it is measured from the time the student enters the new school or from his/her school history; and

(f) what state grade level standards will be used as a measure.

RESPONSE: (a) The rule has been clarified to reflect that the standard of determination of a specific learning disability is founded on the student's adequate achievement based on the student's age or grade level based on state approved K-

12 content standards.

(b) The State Superintendent concurs with this comment and has amended the rule accordingly.

(c) The language in (2) has been clarified to indicate that the intent allows for the child to be identified as having a LD when the level of intervention necessary to sustain the response can only be provided through special education.

(d) One of the criteria for a child to be identified as having a LD when using the response to intervention process is to show that the child is not achieving adequately for the child's age or to meet state approved grade level standards. The determination of whether the child is not achieving adequately for the child's age or to meet state approved grade level standards is best determined by an analysis of the student's current level of academic performance and the student's rate of learning when provided research based interventions.

This process may result in some lower ability students being identified as eligible for special education. However, this can occur only if there is an insufficient response to scientific, research based interventions. Whether this will result in more students determined eligible for special education remains to be seen. The identification rate is probably more a function of the fidelity of a school district's application of scientific, research based interventions. The rules, as written, encourage districts to rigorously apply scientific, research based interventions before determining a student as having a LD when using the response to intervention method for LD identification.

(e) It is up to the LEA to define "initial level of performance;" and

(f) The state does not have a state curriculum but it does have state approved K-12 content standards. In accordance with accreditation rules, districts must align their curriculum to the state approved K-12 content standards. For purposes of clarity, references to state grade level standards have been replaced by the phrase "state approved K-12 content standards."

NEW RULE IX (10.16.3324) EXTENDED SCHOOL YEAR SERVICES

(1) remains as proposed.

(2) IEP teams shall use recoupment and regression as the criteria for determining eligibility for extended school year services (ESY). In the absence of the opportunity to collect data to determine regression, the IEP team may conclude that ESY services are necessary based on observations and other information that suggest regression and difficulty with recoupment may occur.

(3) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with 34 CFR 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

COMMENT: MCASE commented that they are pleased to see a clarification of the criteria to be used for determining eligibility for ESY services and that the proposed rule is consistent with the requirements for a free appropriate public education (FAPE) and the U.S. Department of Education's interpretation as contained in the comment and discussion section of the final rules as published in the Federal Register.

COMMENT: A commenter stated she was pleased with the definition of ESY eligibility and its standard of regression and recoupment.

COMMENT: The Montana Advocacy Program (MAP) commented that the proposed new rule addressing ESY was not necessary to comply with new federal statutes and regulations and that it limited the availability of FAPE for students with disabilities and thus is in violation of the Individuals with Disabilities Education Act (IDEA). It was further stated that the standard of regression and recoupment does not allow for an individualized approach.

RESPONSE: The proposed new rule was determined necessary to ensure that LEAs and IEP teams have a common standard for determining a student's need for ESY. This has been a source of confusion for LEAs as well as parents. In its comments in the Federal Register regarding the final regulations under IDEA, the U.S. Department of Education commented that the IDEA does allow for the establishment of an ESY standard of regression and recoupment. Language has been added to the rule to address the individually oriented requirements of IDEA and the provision of FAPE. Language has also been added to make it clear to IEP teams that documentation of past regression is not required for the IEP team to make a determination that ESY is necessary.

The OPI publishes an ESY guidance document that assists IEP teams in determining eligibility for ESY based on a standard of regression and recoupment.

4. The Superintendent of Public Instruction has amended ARM 10.16.3007, 10.16.3018, 10.16.3121, 10.16.3132, 10.16.3135, 10.16.3136, 10.16.3142, 10.16.3150, 10.16.3180, 10.16.3181, 10.16.3220, 10.16.3321, 10.16.3340, 10.16.3341, 10.16.3502, 10.16.3504, 10.16.3506, 10.16.3523, 10.16.3528, 10.16.3531, 10.16.3560, 10.16.3571, 10.16.3660, 10.16.3661, 10.16.3662, 10.16.3803, and 10.16.3810 as proposed.

5. In consideration of the comments received, the Superintendent of Public Instruction has amended the following rules as proposed with the following changes, stricken matter interlined, new matter underlined:

10.16.3008 ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE (1) "Adversely affect the student's educational performance" means that there is evidence that measures of student performance (e.g., achievement tests, grades, behavioral or developmental assessments, classroom based assessment, observations, progress monitoring, or criterion-referenced tests, etc.) indicate a pattern of educational, developmental, or functional attainment or achievement below the student's age or grade level based on state approved K-12 content standards that can wholly or in part be attributed to the disabling condition.

COMMENT: NWCASE recommended deletion of the terms "developmental" and "functional" because the terms are addressed in the actual definitions of the individual categories (i.e., cognitive delay, traumatic brain injury, orthopedic

impairment) and that the statement was incomplete because it doesn't reflect educational standards. NWCASE recommended that the rule be amended to read "indicate a pattern of educational attainment below expected state standards for age and grade level."

RESPONSE: The State Superintendent has determined that language should be added regarding "state approved K-12 content standards" and has amended the rule accordingly. The inclusion of the terms "developmental" and "functional" provides breadth and clarification to the rule and therefore remains as proposed.

COMMENT: One commenter recommended deleting the word "observations" from the list to measure student performance because observations are not measurable.

RESPONSE: Some assessments require the use of observations and therefore the State Superintendent has determined that the language should remain as proposed.

10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age or grade-level based on state approved K-12 content standards:

(a) The student does not make sufficient progress to meet age or ~~state~~ grade level based on state approved K-12 content standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics ~~reasoning~~ problem solving.

(b) Consistent with district ~~policy~~ procedures, evaluation teams shall use either response to scientific, research based intervention under ARM 10.16.3019A or severe discrepancy under ARM 10.16.3019B when determining whether the student is not making sufficient progress toward age or grade level based on state approved K-12 content ~~grade-level~~ standards.

(c) The student may not be identified as having a specific learning disability if the student's significantly low rate of progress in meeting age or grade level based on state approved K-12 content ~~grade-level~~ standards is primarily the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; cultural ~~difference~~ factors; or a lack of appropriate instruction.

COMMENT: NWCASE recommended adding "ability levels" back into (1) and the word "state" to grade level standards; to change "mathematics reasoning" to "mathematics problem solving;" changing the term "policy" to "procedures" and either defining the phrase "significantly low rate of progress" or deleting it.

COMMENT: A commenter requested that clarification be made to identify what "state grade level standards" will be used as the measure.

COMMENT: A commenter recommended that the terminology "mathematics reasoning" be changed to "mathematics problem solving."

RESPONSE: The State Superintendent has determined that the addition of "ability levels" to the first sentence would not be consistent with the intent of the U.S. Department of Education. In the comment section of the Federal Register, Vol. 71, #156, page 46652, it is stated that "the first element in identifying a child with SLD should be a child's mastery of grade-level standards, not abilities. A clarification will be made throughout the rules to refer to state standards as "state approved K-12 content standards". The term "policy" has been replaced with "procedures" and the term "mathematics reasoning" has been changed to "mathematics problem solving".

Additionally, for purposes of consistency with federal regulations, the State Superintendent has replaced "cultural difference" with "cultural factors" in (1)(c).

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) through (3) remain as proposed.

(4) The local educational agency shall implement procedures for students with disabilities in private elementary and secondary schools ~~as defined by 20-5-102, MCA,~~ and consistent with the requirements of 34 CFR 130 through 148 and state administrative rules.

(5) The local educational agency may not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202c of the Controlled Substances Act (21 USC 812c) for a student child as a condition to attending school, receiving an evaluation under 34 CFR 300.300 through 300.311, or receiving special education and related services in an individualized education program in accordance with 34 CFR 300.174 accordance with the requirements of the Individuals with Disabilities Education Act.

(6) through (8) remain as proposed.

COMMENT: NWCASE recommended that the proposed language in (5) of the rule be revised to read as follows: "the LEA may not require parents to obtain a prescription for substances identified under schedules I-V in section 202c of 21 USC 813c as a condition of attending school ... in accordance with 34 CFR 300.311."

RESPONSE: The State Superintendent concurs with NWCASE's comment and has amended the rule as set forth above.

COMMENT: MAP commented that the clarification of "resides" in (1) was helpful but felt that further clarification of the responsibility for FAPE was needed because there are different requirements, depending on the circumstances of the child, and as a result, it can be confusing and there may be gaps in which the circumstances of some children are unintentionally overlooked.

RESPONSE: There are a variety of controlling policies, administrative rules, state statutes, and interagency agreements that determine and define financial and FAPE responsibilities. While we acknowledge that this can be confusing at times due to the numerous circumstances surrounding placement of individual children, it's

not possible to address all unique circumstances in this rule.

Additionally, the State Superintendent has eliminated the language "as defined by 20-5-102, MCA" from (4), which effectively eliminated home school children, based on the determination that there needs to be further investigation into the impact of this change prior to adoption of the proposed language.

10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND RESPONSIBILITIES (1) through (1)(b)(i) remain as proposed.

(ii) describe student identification activities including audiological, health, speech/language, and visual screening, and review of data or records for students who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, waiver of learner outcomes (accreditation standards), regular education intervention ~~procedures~~, and ~~results of progress monitoring procedures, and procedures for identification of children who are suspected of being a child with a disability even though they are advancing from grade to grade;~~

(iii) remains as proposed.

(iv) identify the ~~policy~~ procedures of the local education agency for identification of a student as having a specific learning disability. If a local educational agency adopts ~~a policy~~ procedures to use a response to scientific, research based intervention in learning disability identification, it must identify the subject areas (language arts, math, reading), grades, and schools ~~buildings~~ for which such ~~a policy applies~~ procedures apply; and

(v) through (4) remain as proposed.

COMMENT: NWCASE recommends striking "and results of progress monitoring" in (1)(b)(ii) and replacing it with "and children suspected of a disability even though advancing from grade to grade." Additional recommendations were to change the term "policy" to "procedures" and to add "subject areas (language arts, math, reading)."

RESPONSE: The State Superintendent concurs with comments from NWCASE and has amended the rule as set forth above.

10.16.3141 SUPERINTENDENT OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING (1) through (1)(a)(ii) remain as proposed.

(iii) development of strategies to enable the local educational agency to improve services, educational practices, and outcomes for students with disabilities;

(iv) through (2)(b) remain as proposed.

COMMENT: MAP recommended that subsection (1)(a)(ii) be revised to add the terms "educational practices and outcomes".

RESPONSE: The State Superintendent concurs and has added the language as suggested.

10.16.3194 SUPERINTENDENT OF PUBLIC INSTRUCTION

NOTIFICATION TO LOCAL EDUCATIONAL AGENCY OF INELIGIBILITY TO RECEIVE FUNDS UNDER PART B (1) through (3) remain as proposed.

(4) If an LEA is determined to be not eligible for receipt of Part B funds for failure to comply with any of the requirements under Part B and implementing federal and state regulations, the Superintendent of Public Instruction will not ~~make a final determination that the local educational agency is not eligible for receipt of~~ withhold funds without first providing reasonable notice and an opportunity for a hearing in accordance with 34 CFR 300.155.

(5) remains as proposed.

COMMENT: MAP recommended that (4) be revised to read "...the superintendent will not withhold funds without first providing reasonable notice and an opportunity for hearing in accordance with 34 CFR 300.155."

RESPONSE: The State Superintendent concurs with the recommendation and has amended the rule accordingly.

10.16.3320 REQUEST FOR INITIAL EVALUATION (1) remains as proposed.

(2) A local educational agency shall establish procedures for requesting an initial evaluation which include methods for collecting information to determine whether a comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) ~~The~~ When the request for initial evaluation is made by an LEA, the request must include a statement of the reasons for the request, including documentation of ~~general~~ regular education interventions for students enrolled in school, and the signature of the person making the request.

(b) When the request for initial evaluation is made by a parent, the request must include a statement of the reasons for the request and the signature of the person making the request.

~~(b) (c)~~ The All requests shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree ~~which requires~~ that the student needs special education and related services.

~~(c) (d)~~ If an a comprehensive educational evaluation in accordance with 34 CFR 300.301 through 300.311 is warranted, the local educational agency shall obtain consent of the parent before conducting ~~an a comprehensive educational~~ evaluation.

(3) remains as proposed.

COMMENT: NWCASE recommended that the term "comprehensive educational evaluation" be reinstated in this rule to be consistent with the title of ARM 10.16.3321 and also because a LEA has no obligation to conduct assessments that have no bearing on the student's educational program. It was further recommended that there needs to be consistency in terminology used (e.g., general education or regular education) and that "requires" special education in this rule be amended to read "needs" special education.

RESPONSE: The State Superintendent agrees with NWCASE's recommendations and has amended the rule accordingly. Also, "general" education has been replaced with the term "regular" education consistently across the rules proposed to be amended.

COMMENT: MAP stated that the proposed rule places a burden on parents by requiring them to document regular education interventions as well as to address other documentation requirements when requesting an initial evaluation and requested that the rule be modified to address these concerns.

RESPONSE: The State Superintendent agrees with MAP's comment and has amended the rule by amending (1)(a) and adding (1)(b).

10.16.3505 PARENTAL CONSENT (1) through (2)(c) remain as proposed.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.

(ii) through (2)(d)(ii) remain as proposed.

COMMENT: MAP commented that the rule doesn't address parent consent for re-evaluations and that language be added to the rule to address this issue. It was also recommended that the proposed deletion of the language "as developed by the local education agency" be reinstated to prevent confusion about what IEP can be implemented - the last agreed upon IEP or the IEP proposed by the LEA or public agency.

RESPONSE: ARM 10.16.3505 requires implementation of parent consent requirements consistent with 34 CFR 300.300. Therefore, LEAs must obtain parental consent for re-evaluation and the State Superintendent does not feel any language needs to be added to the rule. The State Superintendent does agree with MAP's comment regarding reinstatement of language in (2)(c)(i) and has amended the rule accordingly.

COMMENT: One commenter stated a concern regarding parents who refuse special education services who had previously consented to the services and the LEA's responsibility for FAPE. The commenter wanted the rules to be amended if the federal regulations are amended or OSEP adopts a new regulation.

RESPONSE: If the U.S. Department of Education amends or adopts new regulations under IDEA, the State Superintendent will review the current rules to determine if they need to be amended to be consistent with the federal regulations.

10.16.3508 INITIATING SPECIAL EDUCATION DUE PROCESS

(1) remains as proposed.

(2) The Superintendent of Public Instruction shall develop a model form to assist ~~parents~~ the complainant in filing a request for due process. The request shall include:

(a) through (e) remain as proposed.

(f) a proposed resolution of the problem to the extent known and available to the ~~parents~~ complainant at the time.

(3) and (4) remain as proposed.

COMMENT: MAP commented that a complaint can be filed by a parent or an LEA and therefore suggests that the term "parents" in (2) and (2)(f) be changed to "complainant".

RESPONSE: The State Superintendent concurs with MAP's comment and has amended ARM 10.16.3508 accordingly.

10.16.3510 NOTICE OF HEARING (1) The impartial hearing officer shall, within ~~ten~~ five business days of completion of the resolution process, ~~schedule~~ conduct a prehearing conference pursuant to ARM 10.16.3512. The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include:

(a) remains as proposed

(b) a schedule for discovery, prehearing motions and posthearing legal briefs and/or proposed findings of fact, conclusions of law and order;

(b) through (e) remain the same but are renumbered (c) through (f).

(2) The notice of hearing shall be sent by certified mail to ~~all parties~~ any party not represented by counsel. Any party represented by counsel shall be served by regular mail addressed to the attorney representing the party.

(3) If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or impartial hearing officer may later demand a more detailed account of the issues and matters to be discussed. ~~The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the impartial hearing officer to such a convenient date as stipulated by the parties and approved by the impartial hearing officer.~~

(a) remains as proposed.

(4) The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the hearing officer as stipulated by the parties or upon motion of a party showing reasonable necessity for the continuance. In determining whether to grant a request for continuance or approve a stipulation for continuance, the hearing officer shall consider the potential negative impact on the student who is the subject of the hearing.

COMMENT: MAP commented that due to time constraints the prehearing conference should be conducted within five days. MAP also suggested that the notice of hearing include a schedule for discovery, prehearing motions, and posthearing legal briefs and/or findings of fact. MAP also suggested that either party be allowed to file a motion for continuance as well as both parties stipulating to a

continuance.

RESPONSE: The State Superintendent concurs with MAP's comments and has amended the rule as suggested.

10.16.3515 SCOPE AND LIMITATION OF DISCOVERY (1) Unless otherwise limited by order of the impartial hearing officer, the scope and limitation of discovery shall be as set forth in Montana Rules of Civil Procedure, Rule 26 found in Title 25, chapter 20, MCA, except that answers to written discovery requests shall be served on the other party within 20 days after service of the request.

COMMENT: MAP suggested that this rule be amended to shorten the 30 day time period allowed by the Montana Rules of Civil Procedure for responding to discovery requests to 20 days based on the time limitations for due process hearings and decisions under IDEA. MAP submitted additional comments related to amending ARM 10.16.3514 and 10.16.3517.

RESPONSE: The State Superintendent agrees with MAP's comments regarding the discovery time period and has amended this rule accordingly. The comments regarding ARM 10.16.3514 and 10.16.3517 cannot be addressed by this rulemaking procedure as they were not in the notice of proposed rulemaking action. However, the State Superintendent will review these rules to determine if further rulemaking is warranted to address MAP's concerns.

6. The Superintendent of Public Instruction has repealed the following rules as proposed:

ARM 10.16.3129	PARENTAL INVOLVEMENT
ARM 10.16.3145	PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN
ARM 10.16.3146	FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN
ARM 10.16.3196	OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING
ARM 10.16.3322	COMPOSITION OF A CHILD STUDY TEAM
ARM 10.16.3342	TRANSFER STUDENTS: INTRASTATE AND INTERSTATE
ARM 10.16.3516	LIMITATIONS ON DISCOVERY BY THE IMPARTIAL HEARING OFFICER
ARM 10.16.3751	OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT
ARM 10.16.3752	LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT

7. The Superintendent of Public Instruction has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and responses that do not result in a change to the proposed rules.

COMMENT: MAP suggested adding language to ARM 10.16.3135(1)(a) to address review of public input to identify statewide training needs and assessment of the implementation of evidence based research practices utilized by LEAs in the delivery of special education and related services.

RESPONSE: Public input is addressed through triennial needs assessments, the Special Education Advisory Council, and the Comprehensive System of Personnel Development Council. An analysis of that input is addressed in (1)(a)(i). The addition of language addressing assessment of the implementation of evidence based research practices utilized by LEAs in the delivery of special education and related services would impose further reporting requirements on LEAs and is not a requirement under IDEA. ARM 10.16.3135 remains as proposed.

COMMENT: In connection with ARM 10.16.3220, MAP suggested:

(a) adding a requirement that the policies and procedures to be attached to the program narrative so that there is an official record of them and not just a description;

(b) that OPI require an explicit statement within the program narrative of the age of entitlement established for students;

(c) that districts be required to submit a plan for providing special education and related services through age 21 by a date certain; and

(d) a requirement be added that the OPI make the program narratives available to the public on the OPI web site.

RESPONSE: The State Superintendent believes:

(a) this requirement is already addressed and no further language needs to be added;

(b) directions for submission of program narratives already require that LEAs identify the age for entitlement for education, and therefore new language does not need to be added to the rule;

(c) IDEA 2004 does not require the submission of a LEA plan for addressing full educational opportunity goals (FEOG) and that adding the requirement of submission of a LEA plan addressing FEOG would place an unnecessary burden on LEAs;

(d) the rule addresses the requirements for LEAs and not the State Superintendent and therefore no amendment is necessary. However, the State Superintendent agrees that program narratives should be available on the OPI web site. Following review and approval of FY08 program narratives, the narratives will be available on the OPI web site.

COMMENT: One commenter stated appreciation for the "clear outline" of required additional members to initial evaluations in ARM 10.16.3321.

COMMENT: NWCASE recommended that the language in ARM 10.16.3341(4) be amended consistent with 34 CFR 300.306 to read: "[T]he evaluation report shall include a statement that the student needs special education

and related services."

RESPONSE: The State Superintendent thanks the commenter for their comment.

In connection with NWCASE's comment, the State Superintendent believes it is a critical component of the evaluation process that the evaluation team, after reviewing all of the results of the comprehensive educational evaluation, provide a summary statement that identifies why the student needs special education and related services. The summative description of individual need is vital information in making the determination of a student's need for special education and related services.

COMMENT: In connection with ARM 10.16.3341 MAP suggested that provision of educational services by the LEA in which the residential treatment facility is located not be limited to circumstances where the facility is unable or unwilling to provide FAPE and it should be clear which agency or LEA has the financial responsibility and ultimate responsibility for ensuring FAPE, even if FAPE is delivered by a different agency or LEA.

RESPONSE: The State Superintendent has determined that the language in ARM 10.16.3341 should remain as proposed. Section 20-7-435, MCA specifically establishes FAPE responsibilities for children in children's psychiatric hospitals or residential treatment facilities and 20-7-420, MCA specifically establishes financial responsibilities for children in children's psychiatric hospitals or residential treatment facilities. Modifying the parameters for fiscal and FAPE responsibilities for these children would be inconsistent with state statute.

/s/ Linda McCulloch

Linda McCulloch

State Superintendent of Public Instruction

/s/ Catherine K. Warhank

Catherine K. Warhank

Rule Reviewer

Certified to the Secretary of State May 14, 2007.